IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4944 of 1992
With
SPECIAL CIVIL APPLICATION No. 4961 of 1992

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AJAYABSINGH GYANSINGH & 18 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
Mr. Navin Pahwa for M/S THAKKAR ASSOC. for Petitioner(s) : 1 - 5.
Ms. Kiran Pande, Asst.GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,
MR PARTHIV B SHAH for Respondent(s) : 2.2.1, 2.2.2,2.2.3
UNSERVED-EXPIRED (R) for Respondent(s) : 3,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 20/11/2007
ORAL COMMON JUDGMENT

These two petitions are preferred by the purchasers of the disputed lands against the common judgment and order dated 17th

December, 1991 passed by the Gujarat Revenue Tribunal [hereinafter referred to as "the Tribunal"] in Revision Applications No. TEN.B.A.931 of 1983 and 936 of 1983.

2. The petitioners claim to be the agriculturists having lands at Village Vastana, Sokhda and Bherai of Taluka Matar. The petitioners purchased the disputed lands Block Nos. 52 and 38 of Village Lilapur, Taluka Dascroi from one Thakor Udaji Punaji, the respondent No.2 in Special Civil Application No. 4944 of 1992; and the disputed land Block No. 51 of Village Lilapur, Taluka Dascroi from one Badarji Varuji Thakor, the respondent No.2 in Special Civil Application No. 4961 of 1992.

3. It appears that both set of disputed lands were new tenure lands in the hands of the vendors Udaji Punaji Thakor and Badarji Varuji Thakor. Both the vendors applied to the Prant Officer, Viramgam under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 [hereinafter referred to as “the Act”] for permission to sell the lands. The Prant Officer, by his order dated 17th January 1982 and 21st January 1982, granted such permission to the vendors Udaji Punaji and Badarji Varuji respectively on terms and conditions mentioned in the respective order including the condition to pay premium as assessed by the Prant Officer. Pursuant to the said permissions granted by the Prant

Officer, the disputed lands were sold to the petitioners herein by registered sale deeds executed on 27th January, 1982.

4. Feeling aggrieved by the said permission granted under Section 43 of the Act, the State Government preferred the abovereferred Revision Applications No. 931/1983 and 936/1983 before the Tribunal. The Tribunal was, by impugned judgment and order, pleased to hold that the petitioners-purchasers did not have any land within 8 Kms. of the disputed lands. The petitioners, therefore, were not the agriculturists within the meaning of the Act. The permission to sell the disputed lands to the petitioners granted by the Prant Officer was illegal and ultra vires the Act. The Tribunal accordingly set aside the permission granted by the Prant Officer on 17th January, 1982 and 21st January, 1982 respectively. Feeling aggrieved, the petitioners have preferred the present petitions.

5. Mr. Pahwa has submitted that it is true that the petitioners did not own agricultural land within 8 Kms. of the disputed lands. He also admits that the sale of agricultural land to a non-agriculturist is prohibited under Section 63 of the Act. He, however, has submitted that such ban is not imposed under Section 43 of the Act. Besides, the ban, if any, is not absolute inasmuch as the Proviso to Section 63 of the Act

empowers the Collector or an officer authorised by the State Government to grant permission for such sale on such conditions as may be prescribed. Mr. Pahwa has submitted that in absence of an absolute ban, the sale made in favour of the petitioners with the permission of the concerned authority could not have been held illegal or ultra vires the Act. He has further submitted that it is also not true that the petitioners were not the agriculturist within the meaning of the Act. He has submitted that the petitioners did own agricultural lands at villages Vastana, Sokhda and Bherai of Matar taluka. He has submitted that clause (2) of Section 2 of the Act defined "agriculturist" to mean

> "***a person who cultivates the land personally***". ***The words "to cultivate personally" are defined in clause (6) of the Act to mean to cultivate land on one's own account -***
> ***(i).....***
> ***(ii).....***
> ***(iii).....***
>
> ***being land, the entire area of which --***
>
> ***(a) is situate within the limits of a single village, or***
>
> ***(b) is so situated that no piece of land is separated from another by a distance of more than five miles, or***
> ***(c) forms one compact block."***

He has submitted that the aforesaid three conditions mentioned in clauses (a), (b) and (c) have since been deleted by the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1995 [Gujarat Act No. 4 of 1995]. By Section 2 of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Amending Act, 2001, [Gujarat Act No. 3 of 2001], it is further modified that the said clauses

> "***shall be and shall be deemed to always have been deleted***".

In the submission of Mr. Pahwa, the conditions attached to the term "agriculturist" by Section 2(6) of the Act are deleted with retrospective effect, i.e., from the date the same were introduced by Bombay Act No. 13 of 1956. In absence of such conditions, the petitioners cannot be said to be "non-agriculturist", nor the transfer of the disputed lands in favour of the petitioners can be said to have been made in contravention of Section 63 of the Act. The proceedings initiated for alleged violation of Section 63 of the Act shall stand abated.

6. It is not in dispute that the petitioners are agriculturists within the State of Gujarat. It is also true that Section 43 does not impose a ban on transfer of agricultural land to a non-agriculturist. The petitioners purchased the disputed lands after obtaining permission

for transfer as envisaged by Section 43 of the Act. Section 63 of the Act, inter alia, prohibits transfer of agricultural land to a non-agriculturist . However, the Collector or the authorised officer has been empowered to grant such permission on such conditions as may be prescribed. Nevertheless, the petitioners or their vendors did not obtain permission as envisaged by Section 63 of the Act. The transfer of the disputed lands in favour of the petitioners was, indeed, in violation of Section 63 of the Act.

7. For the purposes of the Act, the agriculturist is one who cultivates the land personally. "To cultivate personally", as it stood prior to its amendment by Act No. 4 of 1995, is defined in Section 2(6) of the Act as under;

> ***2. In this Act, unless there is anything repugnant in the subject or context,___***
> ***(6) "to cultivate personally" means to cultivate land on one's own account __***
> ***(i) by one's own labour, or***
> ***(ii) by the labour of any member of one's family, or***
> ***(iii) under the personal supervision of oneself or any member of one's family, by hired labour or by servants on wages payable in cash or kind but not in crop share,***
> ***being land, the entire area of which ___***

(a) is situate within the limits of a single village, or

(b) is so situated that no piece of land is separated from another by a distance of more than five miles, or

(c) forms one compact block:

With the repeal of the abovereferred clauses (a), (b) and (c), an agriculturist would be the one who cultivates the land personally as defined in Section 2(6) of the Act irrespective of the distance of such land from another land. In view of the amendment of Gujarat Act No. 4 of 1995 by the Gujarat Act No. 3 of 2001, the meaning of the word "agriculturist" stands amended from the date of its introduction. Hence, irrespective of the distance between the lands cultivated by the petitioners and the disputed lands purchased by them, the said transfers would not be hit by Section 63 of the Act. Further, Section 3 of the Gujarat Act No. 3 of 2001 provides for abatement of pending proceedings as under;

> ***"3. Abatement of legal proceedings.___All proceedings relating to any order made or purported to be made under Sec. 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom.LXVII of 1948) hereinafter referred to as "the Principal Act") for contravention of provisions of Sec. 63, so far as it relates to the breach of clause (6) of Sec. 2 of the principal Act, pending before any Court, Tribunal or***

> ***other authority or any such proceedings initiated by any such authority on or after the commencement of the amending Act shall stand abated notwithstanding anything contained in Sec. 84-C of the principal Act."***

Hence, though on the date of the disputed transfers, the petitioners were not the agriculturists within the meaning of the Act, though the disputed transfers were made in contravention of Section 63 of the Act, in view of the abovereferred Amendments of 1995 and 2001, the prohibition imposed under Section 63 of the Act stood removed with retrospective effect. In other words, such illegal transfers have been legitimised by Legislative action.

8. In above view of the matter, the petitions are allowed. The impugned judgment and order dated 17th December 1991 passed by the Gujarat Revenue Tribunal in Revision Applications No. TEN.B.A.931 of 1983 and 936 of 1983 are quashed and set aside. Rule issued in each petition is made absolute. The parties will bear their own cost. The Registry shall maintain copy of this judgment in each petition.

[Ms. R.M. Doshit, J.]

rmr.